

**McInerny, Daniel**

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**From:** McInerny, Daniel  
**Sent:** Friday, March 11, 2011 2:58 PM  
**To:** Erin Brittain (EBRITTAI@idem.IN.gov)  
**Subject:** FW: AMMH ltr to Valerie Mullins  
**Attachments:** Ltr to Valerie Mullins-EPA.PDF

Ms. Brittain,

Attached is Aimco Michigan Meadows Holdings, LLC's response to the EPA. Per the EPA letter, we were to copy you on the response. Please contact me with any questions. Thanks, Dan McInerny

**Daniel P. McInerny**  
Bose McKinney & Evans LLP  
E-mail: [DMcInerny@boselaw.com](mailto:DMcInerny@boselaw.com)  
Direct phone: 317-684-5102  
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**From:** Sharescan  
**Sent:** Friday, March 11, 2011 2:37 PM  
**To:** McInerny, Daniel  
**Subject:** AMMH ltr to Valerie Mullins

**BOSE  
McKINNEY  
& EVANS LLP**

ATTORNEYS AT LAW

**Daniel P. McNerny**

Direct Dial: (317) 684-5102

Fax: (317) 223-0602

E-Mail: DMcNerny@boselaw.com

March 11, 2011

**Via Certified Mail**

Valerie Mullins  
Enforcement Specialist  
EPA – Region 5  
Enforcement Services Section 1  
(Mail Code: SE-5J)  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

Re: West Vermont Drinking Water Site  
Speedway, Indiana  
Site I.D. #B5UJ;  
Response to General Notice of Potential Liability;  
Aimco Michigan Meadows Holdings, LLC

Dear Ms. Mullins:

Our firm represents Aimco Michigan Meadows Holdings, LLC (“AMMH”). We are in receipt of the United States Environmental Protection Agency’s (“EPA”) February 17, 2011, General Notice of Potential Liability letter (the “General Notice Letter”) addressed to Eric Hilty, Senior Vice President and General Counsel of AIMCO, regarding the above site. A copy of that correspondence is attached. At the outset, it should be noted that while AMMH previously owned the Michigan Plaza property located at 3801-3823 W. Michigan Street, Indianapolis, IN 46222 (the “Michigan Plaza property”), but Apartment Investment and Management Company (“AIMCO”) has never owned any property in the vicinity of the West Vermont Drinking Water site. This letter is in response to the General Notice Letter.

The General Notice Letter states that:

EPA has received information that your client may have owned or operated a facility near the West Vermont Street and Cossell Road area (the “Site”) that generated or transported hazardous substances that were disposed of at that facility.

The General Notice letter also states that EPA:

. . . encourages your client, as a potentially responsible party, to agree to reimburse EPA for costs incurred to date and to voluntarily

Valerie Mullins  
March 11, 2011  
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perform or finance the response activities which EPA has determined or will determine are required at the facility.

The General Notice letter provides no specific data or other information to support any connection between the Michigan Plaza property and the Site.

AMMH is actively undertaking a voluntary remediation of the Michigan Plaza property under the auspices of the Indiana Department of Environmental Management ("IDEM") Voluntary Remediation Program ("VRP"), and has been assigned IDEM VRP No. 6061202. AMMH, through its consultant, Mundell and Associates, has amassed a significant amount of data regarding the local and regional hydrology and hydrogeology associated with the Michigan Plaza property. None of the data available to AMMH indicates any hydrologic connection between any contaminants associated with the Michigan Plaza property and the Site. To the contrary, the available data indicates that there is no such hydrologic connection. Our consultant has received certain information from the EPA regarding its limited investigation activities at the Site, and a preliminary review of these data indicate that they support AMMH's position. Our consultant is preparing a technical response to the General Notice Letter, which we will submit to you within the next thirty (30) days.

Our client is certainly willing to cooperate with the EPA regarding providing data and additional information relating to the Michigan Plaza property, the VRP and the Site. My client is unable, however, to agree at this time, given the lack of any known data linking the Michigan Plaza property to the Site, to reimburse EPA for its costs incurred to date or to perform or finance any response activities at the Site.

Within the next thirty days, I will provide additional technical and legal information to your attention relating to your request that my client participate in the cleanup of the Site. Any communication regarding this matter should be directed to me at the Indianapolis address below. Please let me know how you wish to proceed in this matter.

Sincerely,

Bose McKinney & Evans LLP



Daniel P. McInerney

DPM/dgg

Enclosure

cc: Eric Hilty  
Erin Brittain

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

FEB 17 2011

RECEIVED  
FEB 24 2011

REPLY TO THE ATTENTION OF  
West Vermont Drinking Water  
SE-5J

DENVER LEGAL

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Eric Hilty, Senior Vice-President  
General Counsel  
AIMCO, Suite 1100  
4582 S. Ulster Street Parkway  
Denver, Colorado 80237

RE: West Vermont Drinking Water Site, Speedway, Indiana Site ID#B5UJ  
General Notice of Potential Liability

The United States Environmental Protection Agency (EPA) has documented and investigated releases or threat of release of hazardous substances, pollutants, or contaminants at the West Vermont Drinking Water Site, Speedway, Indiana located in Speedway, Indiana ("West Vermont Drinking Water Site" or "the Site"). The Site is a residential neighborhood in the West Vermont Street and Cossell Road area, comprised of multiple residential parcels.

Since June 2009, the Marion County Health Department (MCHD) has documented vinyl chloride in water samples collected from residential drinking water wells at a maximum concentration of 62.7 micrograms per liter (ug/L), which exceeds EPA's Removal Action Level (RAL) of 2 ug/L.

EPA has reviewed the effects of these hazardous substances, pollutants, or contaminants on the public health, welfare or the environment and concluded that a response action addressing conditions at the Site is necessary to protect the public health, welfare or the environment. EPA has/will expend public funds to take this action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 *et seq* (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (SARA), unless EPA determines that such action will be done properly by a responsible party or parties.

Responsible parties under CERCLA include the current and former owners and operators of facilities, persons who generated the hazardous substances, and persons who were involved in the transport, treatment, or disposal of hazardous substances at the Site. Under Section 107(a) of CERCLA, where EPA expends public funds in responding to and cleaning up hazardous

substances, responsible parties are liable for all costs associated with the response action and all other necessary costs incurred in cleaning up the Site, including investigation, planning, and enforcement-related costs.

EPA is currently planning or has performed the following response actions to mitigate threats posed by the presence of hazardous substances at the Site:

1. Develop and implement a Health and Safety Plan;
2. Prepare a detailed work plan to accomplish the project in the most effective, efficient and safe manner;
3. Connect residential properties in the West Vermont Street and Cossell Road area to a municipal drinking water supply.
4. Transport and dispose off-site any hazardous substances, pollutants and contaminants at a CERCLA-approved disposal facility in accordance with EPA's Off-Site Rule (40 CFR § 300.440); and,
5. Take any other response actions to address any release or threatened release of a hazardous substance, pollutant or contaminant that the EPA OSC determines may pose an imminent and substantial endangerment to the public health or the environment.

EPA has received information that your client may have owned or operated a facility near the West Vermont Street and Cossell Road area (the Site) that generated or transported hazardous substances that were disposed of at that facility. By this letter, EPA notifies you of your client's potential liability with regard to this matter and encourages your client, as a potentially responsible party, to agree to reimburse EPA for costs incurred to date and to voluntarily perform or finance the response activities which EPA has determined or will determine are required at the facility. EPA is willing to discuss with your client the entry of an appropriate administrative consent order under which your client would perform or finance response activities and reimburse EPA for its costs. If a consent order cannot be promptly concluded, EPA may issue a unilateral order under Section 106 of CERCLA, requiring your client to perform specified work. Under Sections 106 and 107 of CERCLA, your client may be liable for reimbursement of EPA's costs, for statutory penalties, and for treble damages for noncompliance with such an order. If your client is a qualified small business, enclosed is an EPA Small Business Regulatory Enforcement Fairness Act (SBREA) information sheet which may be helpful if you are subject to an EPA enforcement action.

Because of the conditions described above, EPA believes that response activities at the Site must be initiated as quickly as possible. Therefore, EPA does not intend to utilize the special notice procedures available under Section 122(e) of CERCLA.

As a potentially responsible party, your client should notify EPA in writing within fifteen (15) days of receipt of this letter of your client's willingness to perform or finance the activities

described above and to reimburse EPA for its costs. The response should be sent to:

Valerie Mullins, Enforcement Specialist  
EPA – Region 5  
Enforcement Services Section 1  
(Mail Code: SE-5J)  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

If EPA does not receive a timely response, EPA will assume that your client does not wish to negotiate a resolution of their potential responsibility in connection with the Site and that your client declined any involvement in performing the response activities.

Your client's response should indicate an appropriate name, address, and telephone number for further contact. If your client is already involved in discussions with State or local authorities or involved in a lawsuit regarding this facility, your client may continue such activities as they see fit. This letter is not intended to advise your client or direct you to counsel your client to restrict or discontinue any such activities already underway. You are advised; however, to report the status of those discussions or actions that you have with State and local authorities in your response to this letter and to provide a copy of the response to any other parties involved in those discussions or actions.

If you need further information regarding this letter, you may contact Mr. Thomas C. Nash of the EPA, Office of Regional Counsel at 312-886-0552 or Ms. Valerie Mullins of the Enforcement Services Section at 312-353-0324. For technical questions, you may contact EPA On-Scene Coordinator Shelly Lam at (317) 417-0980.

Due to the nature of the problem at this facility and the attendant legal ramifications, EPA strongly encourages your client to submit a written response within the time frame specified here. We hope your client will give this matter immediate attention.

Sincerely yours,



Linda M. Nachowicz, Chief  
Emergency Response Branch

cc: Erin Brittain, Indiana Department of Environmental Management

Enclosure: SBREFA